In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 881

MIAMI TRANSPORTATION COMPANY, INC., OF INDIANA, A CORPORATION, PLAINTIFF-APPELLANT

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS-APPELLEES

MOTION TO AFFIRM

Appellees, pursuant to Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States, move that the decree of the District Court be affirmed.

This is a direct appeal from the final decree,[1] dated August 14, 1947, of a specially constituted district court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellant's complaint to set aside an order of the Interstate Commerce Commission.

[1] The Court also made detailed findings of fact and conclusions of law, though writing no opinion. An opinion, concurring in part and dissenting in part, was filed by United States District Judge Lindley.

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Appeal was allowed on August 18, 1947, and appeal papers were served on August 22, 1947.

The Commission's order, dated September 27, 1944, granted to appellant, as partial successor in interest to the original applicant, operating authority under the "grandfather clause" of Section 206 (a) of Part II of the Interstate Commerce Act as amended (49 U. S. C. 306 (a)) as a common carrier by motor vehicle of general commodities (with certain exceptions) over certain regular routes and of certain specified commodities from and to certain points; but denied authority to serve other territory[2] included in the application. Appellees submit that the appeal presents no substantial question, and that the decree of the District Court should be affirmed.

The only question arising on this appeal[3] relates to the weight of the evidence with respect to the geographical scope of the operations per-

[2] The authority granted is set forth in Appendix D to the Commission's report, reproduced in Appendix hereto. The authority claimed and denied is set forth in Appendix E to the Commission's report, reproduced in Appendix hereto.

[3] In the court below the question was also argued whether the Commission could eliminate duplications in operating authority granted, by excluding the authority already held by Miami Transportation Company of Ohio, an affiliated corporation admittedly under common control with appellant, and created merely for the purpose of complying with Ohio law regarding intrastate operations. The Court, following *Elliott* v. *United States*, 59 F. Supp. 328, 334–5 (D. Md., 1945), approved the Commission's course in eliminating such duplications in the certificate granted; and no error is assigned by appellant with respect to this determination.

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formed during the "grandfather" period. And the proposition is firmly established by a long line of authoritative judicial decisions that it is for the Commission to determine, upon weighing the evidence presented in an applicant's behalf, the precise scope of the geographical area which a motor carrier making application under the "grandfather clause" shall be authorized to serve.

In a leading case, *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, 480–81, the Court, in sustaining geographical limitations imposed by the Commission under the "grandfather clause," said:

> The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission * * *. The Act provides the test of "bona fide operation." That standard carries the connotation of substantiality. It also makes clear that a holding out to serve a specified area is not alone sufficient. It is "actual rather than potential or simulated service" which is required. *McDonald* v. *Thompson*, 305 U. S. 263, 266. Substantial, as distinguished from incidental, sporadic, or infrequent, service is required. Substantial service actually rendered may have been confined to narrow limits. *Loving* v. *United States*, 32 F. Supp. 464, aff'd 310 U. S. 609. Ability to render the service throughout the wide reaches of the territory, which the applicant professed to be willing to serve, may not

> have existed * * * While service to and from all points in the States included in the application was not allowed, the reduction was determined by the standard of substantiality of service.[4]

It is also plain that an applicant claiming "grandfather" rights has the burden of proving his claim.[5] The "grandfather clause" confers a special privilege, which extends only to carriers plainly within its terms. *Gregg Cartage Company* v. *United States,* 316 U. S. 74, 83. As said in *Alton Railroad Company* v. *United States,* 315 U. S. 15, 25 "applicant carries the burden of establishing his right to the statutory grant."

It is well-settled that it is for the Commission to determine the weight and credibility of the evidence. *Otis Evans* v. *United States,* 329 U. S. 668.[6] More specifically, the rule is that the Com-

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[4] Other recent decisions to the same effect include *United States* v. *Maher*, 307 U. S. 148; *Alton Railroad Company* v. *United States*, 315 U. S. 15, 24; *Crescent Express Lines, Inc.* v. *United States*, 320 U. S. 401, 408; *Pyramid Moving Company* v. *United States*, 323 U. S. 811; *Turner* v. *United States*, 323 U. S. 674; *Alabama Highway Express, Inc.* v. *United States*, 325 U. S. 837; *Deaton Truck Line, Inc.* v. *United States*, 326 U. S. 680; *Howard Hall Company, Inc.* v. *United States*, 328 U. S. 18; *W. H. Tompkins* v. *United States*, 329 U. S. 683.

[5] *Akin* v. *United States*, 62 F. Supp. 391, 396 (W. D. La., 1945), aff'd 327 U. S. 766.

[6] To the same effect see *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, 484, 490; *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156, 158; *B. & O. R. R. Co.* v. *United States*, 298 U. S. 349, 359; *Mer-*

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mission is not obliged to give credence to the vague and general assertions made by interested witnesses in their oral testimony. Thus in *Transamerican Freight Lines* v. *United States,* 51 F. Supp. 405, 410 (D. Del., 1943), the court said:

> Plaintiff's main complaint is that the Commission had no business to reject the uncontradicted testimony of Alfred Daniel—son of the applicant—to the effect that his father's operations continued without interruption until December 17, 1935. The Commission, as we have said, thought this testimony "vague and unsupported."
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> But, this was still a factual decision. The issue of credibility is for the Commission, as it is for a jury. Or, as was said in *Loving* v. *United States,* D. C., 32 F. Supp. 464, 467, affirmed 310 U. S. 609, 60 S. Ct. 898, 84 L. Ed. 1387: "The hearing of evidence is an exclusive function of the Commission and it may disbelieve or disregard any evidence as it seems unconvincing; it may give as much or as little weight to evidence as it seems proper." The reason the fact-finding group—be it jury or administrative body—may reject uncontradicted

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chants Warehouse Company v. *United States*, 283 U. S. 501, 508; *C. R. I. & P. Railway* v. *United States*. 274 U. S. 29, 33–34; *Assigned Car Cases*, 274 U. S. 564, 580; *Loving* v. *United States*, 32 F. Supp. 464, 467 (W. D. Okla., 1940), aff'd 310 U. S. 609; *Transamerican Freight Lines* v. *United States*, 51 F. Supp. 405, 410 (D. Del., 1943); *Fish Transport Company, Inc.* v. *United States* (D. Mass), decided December 22, 1944.

testimony is their belief in the improbability of the statements made, omissions in the account of the particular transaction, the conduct and manner of the utterer or his attempt to color the facts. *Quock Ting* v. *United States*, 140 U. S. 417, 420, 11 S. Ct. 733, 35 L. Ed. 501; *Fire Association of Philadelphia* v. *Weathered*, 5 Cir., 54 F. 2d 779; *American Casualty Co. of Reading* v. *Windham*, 4 Circ., 107 F. 2d 88; *Humphreys* v. *Commissioner*, 7 Circ., 125 F. 2d 340.

See also *Fish Transport Company* v. *United States* (D. Mass., Civil No. 3142), in an opinion rendered December 22, 1944.

The facts insofar as here pertinent and the basis for the Commission's decision are adequately stated in the following excerpts from the Commission's report. In its second report, dated May 22, 1943, the Commission said:

> Applicant is claiming the authority sought by reason of its alleged holding out to the general public to transport general commodities between the points in the territory applied for, and by reason of actual operations conducted by it since prior to June 1, 1935. In support of its claim it submitted at the further hearing exhibits on which are listed approximately 116,000 shipments, including a relisting of shipments submitted at the original hearing. In addition, several shippers testified in respect of the extent to which they had used applicant's service in the past.

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In the exhibits mentioned shipments are segregated according to the routes over which they were allegedly transported. In some instances, however, shipments listed as indicative of operation over a particular route obviously did not move over such route. In others, shipments shown moved only over an unspecified intermediate portion of the claimed route. Some shipments were interchanged with other carriers but the interchange points are not shown. In still other instances the same shipments are shown as indicative of operation over different routes.

As representative of the underlying documents from which the exhibits were compiled applicant submitted in evidence a group, selected at random, of truck manifests together with some delivery receipts. This evidence purportedly supports, as representative, the claimed route between Cincinnati and Pittsburgh, Pa., over Ohio Highway 4 from Cincinnati to Middletown, Ohio, thence over Ohio Highway 73 to its junction with U. S. Highway 25, thence over U. S. Highway 25 to Dayton, Ohio, thence over Ohio Highway 4 to its junction with U. S. Highway 40, thence over U. S. Highway 40 to Columbus, Ohio, thence over Ohio Highway 16 to Conshocton, Ohio, thence over U. S. Highway 36 to Cadiz, Ohio, and thence over U. S. Highway 22 to Pittsburgh. Neither the truck manifests nor delivery receipts show the actual route

traversed. The delivery receipts, however, show that 111 were issued at applicant's Indianapolis office and the remainder (3) at its Cincinnati office. The truck manifests likewise appear to have been issued at the respective offices of applicant. Consignees' signatures on the delivery receipts substantiate oral testimony that such documents accompanied the shipments to destination. An owner-operator of motor vehicles whose services applicant has used and applicant's vice-president testified that all applicant's traffic was transported over the most direct route between origin and destination unless the truck manifests indicated otherwise. Based on this premise that the shipments covered by the delivery receipts moved through Indianapolis or Cincinnati and thence over the most direct routes to destination, none of the underlying documents supports the claimed route. For example, of the 114 shipments covered by the delivery receipts 22 were from or to points applicant does not seek authority to serve; 42 moved to Dayton, presumably, as indicated by applicant's vice-president, over the direct route from Indianapolis east over U. S. Highway 40 to its junction with U. S. Highway 35, thence over the latter highway to Dayton, whereas the claimed route is from Cincinnati north to Dayton through Hamilton, and 27 shipments moved to Pittsburgh, from or through Indianapolis, and 4 in the reverse direction, all of which appear to have moved over routes

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other than those which they allegedly support. Many other irregularities are noted of which a shipment from Fairmont, W. Va., to Cincinnati is typical. This shipment is shown on a truck manifest as having been loaded at Indianapolis with three other shipments, one originating at Indianapolis, and the others at Lawrenceville, Ill. Destinations of these shipments are shown as Eaton, Hamilton, and Cincinnati, Ohio, and the truck was shown on the manifest to be loaded to these destinations in the same order. It is obvious therefrom that the route followed must have been from Indianapolis over U. S. Highway 40 to its junction with U. S. Highway 35, thence over U. S. Highway 35 to Eaton, and thence over U. S. Highway 127 to Hamilton and Cincinnati. Such a route is in its entirety west of the route the evidence was presented to support. The exhibits are replete with discrepancies such as are outlined above. The shipper testimony is very general. For the most part it reflects only transportation applicant was found entitled to perform in the prior report. In the case of widespread operations such as this where numerous regular and irregular routes are sought the data submitted in support of applicant's claims should be so arranged that shipments relied on in support of particular routes can readily be segregated and should be confined to shipments which actually moved over the particular routes claimed. Where a shipment moved over a portion

> only of a particular route, the specific portion should be indicated and where a shipment is listed in support of parts of two or more routes this fact also should be indicated. Notwithstanding the unsatisfactory nature thereof we have reviewed the entire record in the proceeding and are convinced no authority in addition to that granted in the prior report has been justified.

Thereafter, the proceedings were again reopened for further hearing "solely to afford applicant an opportunity to submit additional proof so that a more accurate determination can be made of the claimed operations." In the Commission's subsequent report of September 27, 1944, the Commission pointed out that plaintiff had failed to submit satisfactory proof.

> Miami's claim to the additional authority described in appendix E is based upon an alleged holding out by applicant to the public to transport general commodities, and on alleged actual operations under that holding out since a date prior to June 1, 1935. Its claims are supported by abstracts submitted in evidence at the prior hearing listing a large number of representative shipments purportedly transported by applicant on June 1, 1935, and until December 1941, and by shipper testimony in respect of the extent of the use of applicant's service in the past. In the prior report, we considered the evidence upon which Miami now relies to support its

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claims and found that because of irregularities and deficiencies in the evidence it provided no satisfactory basis for a conclusion that applicant was entitled to additional "grandfather" authority as claimed. Our conclusions respecting the probative value of the evidence were set out in detail in that report. Therein, among other things, we specifically pointed out that *the oral evidence was too general in character to support a finding that applicant was entitled to "grandfather" rights in excess of those granted, and that the documentary evidence was unsatisfactory in that shipments listed in abstracts as representative of operations over a particular route obviously did not move over such route, that other shipments were shown as moving over an unspecified intermediate portion of a claimed route, that some shipments were shown to have been interchanged with other carriers but that the interchange points were not shown, and that the same shipments were used to indicate operations over different claimed routes.* We also pointed out the manner in which the documentary evidence should have been assembled or arranged so that we might readily determine the route or routes over which particular shipments moved. In recognition of the unsatisfactory nature of the evidence, and upon consideration of the petition filed by Miami seeking reconsideration of the evidence submitted at the prior hearing, *we reopened the proceeding for further hearing*

for the specific purpose of affording applicant or Miami an opportunity to submit additional or clarifying evidence in support of present "grandfather" claims. No such evidence was submitted. Instead at the further hearing Miami submitted abstracts in evidence listing a large number of shipments transported by it during the period from December 17, 1941, to September 1, 1943. This evidence was submitted to show continuity of operation over the involved routes since their acquisition by Miami. *No oral or documentary evidence was presented by either applicant or Miami in respect of claimed operations on or prior to June 1, 1935, and counsel for applicant asserted that no such evidence was available.* [Italics supplied.]

The reviewing court, upon its examination of the record, approved the Commission's conclusions. The only issue raised by the appeal is one regarding the findings and inferences to be drawn, from the evidence of record, with respect to the scope of the geographical area where substantial service was rendered on the "grandfather" date. In cases of this type, sound public policy strongly supports the well established rule that determination of the weight and value of the evidence is a function entrusted to the Commission.

General statements by applicants and their employees are frequently offered in support of unduly broad and sweeping claims for operating authority as a motor carrier. Moreover, under

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the Commission's liberal rules of practice much evidence is often received which has little probative value.[7] It should be left to the experienced judgment of the Commission to determine in each instance what weight should be attributed to such testimony. In view of the fact that not only worthless but even spurious evidence[8] is often

[7] Thus in the present case many of appellant's exhibits were merely lists of shipments claimed to have been made. Such lists, prepared by applicant for use at the hearing have no greater probative value as proof that the shipments were in fact made than similar self-serving statements incorporated as allegations in the application itself would have. Only when and to the extent that they are supported by the underlying original documents of which they purport to be a convenient recapitulation do such lists have any evidentiary value. When tested by the Commission in the instant case, these compilations were found to be untrustworthy as proof of the facts in support of which they were offered. It is from such discredited exhibits that Judge Lindley in his partial dissent draws the basis for his opinion that three routes between Cincinnati and Pittsburgh should have been granted. But even if the references which he cites from such lists were accepted as trustworthy, they would fall short of constituting proof of shipments between those cities over the routes claimed. They cover nothing but movements to certain intermediate points. Judge Lindley's opinion that "if the evidence were of such character as to permit of only one conclusion" appellant would be entitled to relief as to these three routes thus rests ultimately on the testimony of one truck driver (Jones) that he drove trucks over one of these routes (U. S. 22) between Cincinnati and Pittsburgh. Appellees respectfully submit that no such conclusive effect can be given to the general statements made by this witness.

[8] Thus in *Otis Evans* v. *United States*, 65 F. Supp. 183 (W. D. Va., 1946), aff'd 329 U. S. 668, the District Court said: "The oral testimony of the applicant and his witnesses is generally vague and indefinite. As to his documentary evidence,

offered in such cases, it would be extremely unwise to depart from well established principles and adopt for appellant's benefit a new rule of law obliging the Commission to act favorably upon any application in support of which a witness can be found who is willing to testify in general terms in favor of the applicant.

Under well settled principles of law, expressing sound public policy, it is plain that the Commission's determination of the geographical scope of "grandfather" operations proved by appellant, such determination having been sustained on judicial review by the District Court, should not be disturbed on appeal.

For the foregoing reasons, it is clear that this appeal presents no substantial question. It is, therefore, respectfully submitted that the judgment of the District Court should be affirmed.

(Signed) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

(Signed) Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

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it is euphemistic to say that many irregularities appear therein." See also *Wright* v. *United States*, 50 F. Supp. 758 (W. D. N. C., 1943).

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APPENDIX

1. Operation authority granted, "Appendix D" to Commission's Report of September 27, 1944.

Authority granted in No. MC–52743 (Sub-No. 2).

1. General commodities, except livestock, explosives, sand, gravel, coal, and lumber.

Route A, between Indianapolis, Ind., and Cleveland, Ohio: Over U. S. Highway 40 to its junction with U. S. Highway 42 at Lafayette, Ohio, and thence over U. S. Highway 42 to Cleveland, and return serving the intermediate point of Richmond, Ind.

Alternate route: From the junction of U. S. Highways 40 and 42, at Lafayette, to Columbus over U. S. Highway 40, and thence to Cleveland over Ohio Highway 3 and return serving the intermediate point of Columbus.

Route B, between Cincinnati, Ohio and Charleston, W. Va.: Over U. S. Highway 52 to Huntington, W. Va., and thence over U. S. Highway 60 to Charleston and return serving the intermediate and off-route points of Portsmouth, New Boston, and Ironton, Ohio, Ashland, Ky., and Huntington, W. Va.

(Excepting to the extent that Miami Transportation Company (Ohio) is already authorized to perform identical transportation.)

2. Margarine.

Route A, from Columbus to Pittsburgh: From Columbus to Cambridge, Ohio, over U. S. Highway 40; thence to Pittsburgh over U. S. Highway 22; serving the intermediate point of Zanesville, Ohio.

Route B, from Charleston, W. Va., to Raleigh, N. C.: (1) From Charleston to Bluefield, W. Va., over U. S. Highway 21, through Princeton, W. Va., thence return to Princeton, W. Va., over U. S. Highway 21, thence to Rich Creek, Va., over U. S. Highway 219; thence to the junction of Virginia Highway 8 and U. S. Highway 11, over Virginia Highway 8; thence to Roanoke, Va., over U. S. Highway 11; thence to the junction of U. S. Highways 220 and 311 over U. S. Highway 220 through Ridgeway, Va., thence to Winston-Salem over U. S. Highway 311; thence to Greensboro, N. C., over U. S. Highway 421; and thence to Raleigh over U. S. Highway 70; also (s) from Ridgeway, Va., to Virginia-North Carolina State line over Virginia Highway 87; thence to the junction of U. S. Highways 158 and 29 over North Carolina Highway 87; thence to Greensboro over U. S. Highway 29; serving the intermediate points of Roanoke and Winston-Salem.

Route C, from Huntington and Charleston, W. Va., to Bluefield, W. Va.: (1) From Huntington to Bluefield over U. S. Highway 52; and (2) from Charleston, W. Va., over U. S. Highway 119 to its junction with U. S. Highway 52; thence to Bluefield as specified above, with no service at intermediate points.

Route D, from Cincinnati, Ohio to Wheeling, W. Va.: from Cincinnati to Clarksburg, W. Va., over U. S. Highway 50; thence to Fairmont, W. Va. over U. S. Highway 19; thence to Wheeling over U. S. Highway 250; serving the intermediate points of Fairmont, Clarksburg, Parkersburg, W. Va., and Athens, Ohio.

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Route E, from Cincinnati, Ohio to Pittsburgh, Pa.: from Cincinnati to Pittsburgh over U. S. Highway 22, with no service at intermediate points.

Route F, from Cincinnati, Ohio to Fort Wayne, Ind.: from Cincinnati over U. S. Highway 127 to Van Wert, Ohio; and thence to Fort Wayne over U. S. Highway 30, with no service at intermediate points.

Route G, from Charleston, W. Va., to Charlotte, N. C.: (1) From Charleston to Winston-Salem over margarine route B (1) of this appendix; and (2) from Winston-Salem over U. S. Highway 52 to Salisbury, N. C.; and thence over U. S. Highway 29 to Charlotte, with no service at intermediate points.

3. Petroleum Products (in containers)

Route A, from Pittsburgh, Pa. to Cincinnati, Ohio: Over U. S. Highway 22.

Route B, from Pittsburgh to Columbus, Ohio: over margarine route A of this appendix.

Route C, from Richmond, Ind. to Muncie, Ind.: Over U. S. Highway 35.

Service is not authorized at intermediate points on the above-described routes.

Route D, from Cincinnati to Lima, Ohio: Over U. S. Highway 25, serving the intermediate point of Dayton, Ohio.

Route E, from Cincinnati to Cleveland, Ohio: (1) from Cincinnati to Cleveland over U. S. Highway 42; and (2) from Cincinnati over U. S. Highway 42, and its junction with U. S. Highway 40, thence over U. S. Highway 40 to Columbus; and thence over Ohio Highway 3 to Cleveland; serving the intermediate point of Columbus.

4. Floor Coverings:

Route A, from Cincinnati to Cleveland: over U. S. Highway 42.

Route B, from Cincinnati to Pittsburgh: From Cincinnati to Pittsburgh over margarine route E of this appendix.

Route C, from Cleveland to Buffalo, N. Y.: From Cleveland over U. S. Highway 20 to its junction with U. S. Highway 62; and thence over U. S. Highway 62 to Buffalo.

Route D, from Indianapolis, Ind. to Chicago, Ill.: From Indianapolis over U. S. Highway 52 to its junction with U. S. Highway 41; and thence over U. S. Highway 41 to Chicago.

Route E, from Charleston, W. Va., to Richmond, Va.: From Charleston to Roanoke over margarine route B (1) described above; thence to Lynchburg, Va., over U. S. Highway 460; thence to Amherst, Va. over U. S. Highway 29; and thence to Richmond over U. S. Highway 60.

Route F, from Charleston to Charlotte, N. C.: From Charleston to Winston-Salem, N. C., over margarine route B (1) described above; thence to Charlotte over margarine route G (2), described above.

Service is not authorized at intermediate points on the above-described routes.

5. Steel House Sections.

Route A, from Cincinnati to Cleveland: Over floor-covering route A, described above.

Route B, from Cleveland to Buffalo, N. Y.: From Cleveland to Buffalo over floor covering route C, described above.

Route C, from Cincinnati to McMechan, W. Va.: From Cincinnati to Fairmont, W. Va., over mar-

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garine route D, described above; and thence to McMechen over U. S. Highway 250.

Route D, from Cincinnati to Buckhannon, W. Va.: From Cincinnati to Clarksburg, W. Va., over U. S. Highway 50; and thence to Buchannon over West Virginia Highway 20.

Service is not authorized at intermediate points on the above-described routes.

2. Authority claimed by appellant but denied by Commission, "Appendix E" to Commission's Report of September 27, 1944:

General commodities except livestock, explosives, sand, gravel, coal and lumber.

Route A, between Cincinnati and Pittsburgh, Pa.: Over U. S. Highway 22.

Route B, between Cincinnati and Pittsburgh: Over Ohio Highway 4 to Middletown, Ohio, thence over Ohio Highway 73 to its junction with U. S. Highway 25, thence over U. S. Highway 25 to Dayton, Ohio, thence over Ohio Highway 4 to its junction with U. S. Highway 40, thence over U. S. Highway 40 to Columbus, thence over Ohio Highway 16 to Coshocton, Ohio, thence over U. S. Highway 36 to Cadiz, Ohio, and thence over U. S. Highway 22 to Pittsburgh.

Route C, between Cincinnati and Pittsburgh: Over U. S. Highway 50 from Cincinnati to Clarksburg, W. Va., thence over U. S. Highway 19 to Morgantown, W. Va., thence over U. S. Highway 119 to Uniontown, Pa., and thence over Pennsylvania Highway 51 to Pittsburgh.

Route D, between Delaware, Ohio, and Portsmouth, Ohio: Over U. S. Highway 23.

Route E, between Charleston, W. Va., and Weirton, W. Va.: Over U. S. Highway 21 from Charles-

ton to Parkersburg, W. Va., and thence over West Virginia Highway 2 to Weirton.

Route F, between Indianapolis and Cleveland: Over U. S. Highway 36 from Indianapolis to Pendleton, Ind., thence over Indiana Highway 9 to Anderson, Ind., thence over Indiana Highway 32 to Muncie, Ind., thence over Indiana Highway 3 to Hartford City, Ind., thence over Indiana Highway 22 to Jonesboro, Ind., thence over U. S. Highway 35 to its junction with Indiana Highway 9, thence over Indiana Highway 9 to Huntington, Ind., thence over U. S. Highway 24 to New Haven, Ind., thence over U. S. Highway 30 and 305 to Mansfield, Ohio, and thence over U. S. Highway 42 to Cleveland.

Serving all intermediate points on the above described routes, and as off-route points Speedway City and Fort Benjamin Harrison, Ind.; all points in the Cincinnati commercial zone as defined in *Cincinnati, Ohio Commercial Zone,* 26 M. C. C. 49; all points within 25 miles of Cleveland; all points within 35 miles of Pittsburgh; and all points within 25 miles of Charleston.

CERTIFICATE

This is to certify that I have served the foregoing "Motion to Affirm" on Miami Transportation Company, Inc., the plaintiff-appellant, by mailing a copy thereof to its attorney of record, Mr. Howell Ellis, at 520 Illinois Building, Indianapolis, Indiana, this 8th day of September, 1947.

(Signed) B. Howard Caughran,
B. Howard Caughran,
United States Attorney.

U. S. GOVERNMENT PRINTING OFFICE: 1947

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